no title to the goods sold.[12] But where both the effect and motive serve only a personal desire, such as to save one's credit when the payment could not have been demanded, recovery has been denied.[13]

Though there is no actual compulsion in the principal case, yet it is submitted that the services were not so unreasonable as to justify the denial of a recovery. The repair of streets is as much to be encouraged, as a public matter, as the preservation of lost property. Even though the repairs were made to protect the plaintiffs' position as highway authorities, yet that should be no bar to recovery, since their position makes it reasonable for them to act. Since they represent the voters in the repair of streets, it is as reasonable for them to act as it would be for the voters themselves. And it would be difficult to say that the voters of a district were officious in repairing their roads. In truth the highway authorities could not avoid making the repairs without prejudicing themselves and repudiating their duty toward the voters, which exists even though legal liability to repair is removed. It seems, therefore, that an arbitrary use of the phrase "voluntary payment" has led the court to deny relief in a case where in equity and good conscience the defendant should pay.

THE DATE TO WHICH THE TITLE OF THE TRUSTEE IN BANKRUPTCY RELATES BACK. — Under the Bankruptcy Act of 1867 the title of the assignee to the estate of the bankrupt related "back to the commencement of the proceedings in bankruptcy."[1] It was held that under this provision the assignee could sue to recover goods transferred by the bankrupt after the filing of the petition but before the adjudication.[2] The present act provides that "the trustee of the estate of a bankrupt, upon his appointment and qualification, . . . shall . . . be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt." But among the classes of the bankrupt's property so passing to the trustee the act mentions "(5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."[3] An attempt has been made to reconcile these different statements as to the date of relation back of the trustee's title by saying that the words "prior to the filing of the petition" refer to what property passes to the trustee, the words "as of the date he was adjudged a bankrupt" to the time when the property passes.[4] But it is plain that the effect of either phrase must be merely to determine what property passes to the trustee, since the trustee cannot really take title till his appointment and qualification.[5]

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[12] McGhie *v.* Ellis, 4 Litt. (Ky.) 244; Preston *v.* Harrison, 9 Ind. 1; Reed *v.* Crosthwait, 6 Ia. 219. These decisions are in equity. No case seems to have arisen at law, but Professor Keener believes the same result should be achieved. KEENER, QUASI-CONTRACTS, 396.

[13] Harvey *v.* Girard National Bank, 119 Pa. St. 212.

[1] U. S. REV. STAT., 1878, § 5044.

[2] Bank *v.* Sherman, 101 U. S. 403.

[3] BANKRUPTCY ACT OF 1898, § 70 *a*.

[4] See *In re* Pease, 4 Am. B. R. 578, 581; COLLIER, BANKRUPTCY, 8 ed., 807.

[5] Fuller *v.* New York Fire Ins. Co., 184 Mass. 12; Rand *v.* Iowa Central Ry. Co.,

It would seem, since no reference is made to the date of the filing of the petition in connection with the other classes of property passing to the trustee, that the reference to it in connection with the fifth class was due to inadvertence and that Congress really intended to make the adjudication the date of cleavage. *Dicta* may be found which seem to interpret the statute as having this effect.[6] By the decided weight of authority, however, it is interpreted as making the filing of the petition the date of cleavage. Thus a leading case holds that the bankrupt need account to the trustee only for moneys received from goods sold from the stock as it existed at the date of filing of the petition, not from other goods sold before the adjudication.[7] Property transferable by the bankrupt at the date of filing passes to the trustee.[8] But property acquired by him between that date and the adjudication does not.[9] And therefore the latter need not be included in the bankrupt's schedules.[10] This construction of the statute has been used as an argument to give jurisdiction to the court in which a petition is first filed as against the court making the first adjudication.[11] It has been adopted as the basis of an inference that all provable claims must exist at the time when the petition is filed.[12] And, finally, it has been invoked to permit recovery by the trustee from creditors of money obtained by the attachment of the bankrupt's property between the filing of the petition and the adjudication.[13]

In a recent case, a bank, having on deposit moneys belonging to one against whom a petition in bankruptcy had been filed, without notice of the filing, paid out money on checks delivered by the depositor to the payee previous to the filing of the petition. It was held that the bank could not be required, on summary order, to turn over to the trustee in bankruptcy the amount so paid out. *Matter of Zotti*, 26 Am. B. R. 234 (C. C. A., Second Circ.). This case proceeds on the theory, opposite to that indicated above, that the trustee cannot recover on the ground that his title relates back to a period prior to the date of adjudication. It finds support in a decision allowing a lienee of the bankrupt's property to perfect his title after the petition has been filed.[14] If it is to be reconciled with the current of authority on other than procedural grounds, it must be by a loose construction of the statute which will make the date of filing of the petition the test of the bankrupt's title for most purposes, but will protect "honest transactions" occurring between that date and the date of adjudication.[15] A similar distinction is specifically provided for by the English statute.[16]

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186 N. Y. 58; Gordon *v.* Mechanics' & Traders' Ins. Co., 120 La. Ann. 441. *Cf.* Rand *v.* Sage, 94 Minn. 344.

[6] See Hiscock *v.* Varick Bank of New York, 206 U. S. 28, 40; Keegan *v.* King, 96 Fed. 758, 760; *In re* Peacock, 178 Fed. 851, 855; Matter of Fletcher, 16 Am. B. R. 491, 493; Atchison, T. & S. F. Ry. Co. *v.* Hurley, 153 Fed. 503, 509.

[7] *In re* Pease, 4 Am. B. R. 578.

[8] *In re* Barrow, 98 Fed. 582; *In re* Driggs, 171 Fed. 897.

[9] In the Matter of Freeman, 2 N. B. N. Rep. 569; *In re* Ghazal, 174 Fed. 809. See Sibley *v.* Nason, 196 Mass. 125, 131.

[10] *In re* Harris, 2 Am. B. R. 359. See In the Matter of Oliver, 2 N. B. N. Rep. 212, 217.

[11] *In re* Elmira Steel Co., 109 Fed. 456.

[12] *In re* Burka, 104 Fed. 326.

[13] State Bank of Chicago *v.* Cox, 143 Fed. 91.

[14] *In re* Mertens, 144 Fed. 818.

[15] *Cf.* 1 REMINGTON, BANKRUPTCY, §§ 1132–1136.

[16] BANKRUPTCY ACT, 1883, 46 & 47 VICT. c. 52, §§ 43–49.